UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Antonia AGUILAR MALDONADO

Petitioner,

v.

Samuel OLSON, Field Office Director of Enforcement and Removal Operations, St. Paul Field Office, Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the U.S. Department of Homeland Security; U.S. Dept. of Homeland Security; Eric TOLLEFSON, Kandiyohi County Jail Sheriff.

Respondents.

Case No: 02:25-CV-03142

PETITIONER'S REPLY TO RESPONDENTS' MEMORANDUM IN OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

I. INTRODUCTION

Petitioner Antonia Aguilar Maldonado (hereinafter, "Petitioner" or "Ms. Aguilar Maldonado") is detained in Immigration and Customs Enforcement ("ICE") custody, apart from her nursing child, *despite an immigration judge's order for the Department of Homeland Security ("DHS") to release her*, in violation of due process.

Respondents' opposition to Petitioner's motion for Temporary Restraining Order fails to address the central issue: Petitioner's unconstitutional continued detention under the automatic stay provision of 8

C.F.R. § 1003.19(i)(2). Ms. Aguilar Maldonado does not challenge commencement of her removal proceedings or any removal order. Rather, Petitioner challenges the automatic stay regulation which allows DHS to override an immigration judge's order to release a noncitizen on bond and authorizes indefinite detention without adequate process.

This Court should grant Petitioner's motion for Temporary Restraining Order ("TRO") because she is likely to succeed on the merits of her petition for writ of habeas corpus. The *Mathews v. Eldridge* factors weigh entirely in her favor, showing her ongoing detention violates due process. Additionally, as a nursing mother, Ms. Aguilar Maldonado suffers irreparable harm each day she is denied release and unable to provide milk for her child. Petitioner seeks only to post the bond already granted and to be reunited with her two young children while continuing to defend her case in removal proceedings. Petitioner will continue to be prejudiced by her continued detention, while Respondents will face no prejudice in releasing her, as she was already in active removal proceedings at the time of her arrest.

Petitioner respectfully requests that the Court order her immediate release, or at a minimum, to lift the automatic stay without delay so she may post the bond already set by a neutral immigration judge, restoring her liberty while this Court adjudicates the merits of her habeas petition.

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner seeks leave of the Court to incorporate by reference the extensive factual and procedural background set forth in the Habeas Corpus Petition and TRO. *See* ECF No. 1 at ¶¶ 38-46; ECF No. 2 at 3.

As of the date of this filing, Petitioner has spent twenty-six (26) days in jail, since July 17, 2025, despite a neutral immigration judge ordering DHS to release her on bond on July 31. She remains separated from her two young United States citizen children, including one who is nursing. On August 7, 2025, Petitioner appeared for a master calendar hearing before Immigration Judge Kailin Ivany ("IJ Ivany"). At this hearing, Petitioner filed a motion to terminate her removal proceedings. ECF No. 11 at 3; Declaration of Gloria Contreras Edin ("Contreras Edin Decl.") at ¶¶ 7-8. Petitioner seeks discretionary termination of removal proceedings before the Executive Office for Immigration Review ("EOIR" or "immigration court") under 8 CFR § 1003.18(d)(1)(ii)(A) because she entered as an unaccompanied alien child ("UAC"), and therefore United States Citizenship and Immigration Servies ("USCIS") has original jurisdiction to adjudicate her application for asylum, rather than the immigration court. *See J.O.P. v. DHS*, No. 8:19-CV-01944-SAG (D. Md.).

///

III. LEGAL ARGUMENT

A. The Court has jurisdiction over Petitioner's habeas corpus petition and the instant TRO.

1. 8 U.S.C. § 1252(g) is not applicable here.

Respondents' opposition to Petitioner's TRO adopts a much broader reading of 8 U.S.C. section 1252(g) than the law supports. Respondents' reading ignores controlling precedent limiting § 1252(g) to three narrow actions, none of which are at issue here.

The Supreme Court cautioned that the jurisdiction bar under § 1252(g) is "**narrow**" and only "limits review of cases 'arising from' decisions 'to commence proceedings, adjudicate cases, or execute removal orders.'" *Dept. of Homeland Security v. Regents of the University of California*, 591 U.S. 1, 12 (2020) (emphasis added). "**We have previously rejected as 'implausible' the Government's suggestion that § 1252(g) covers 'all claims arising from deportation proceedings' or imposes 'a general jurisdictional limitation.'**" *Id.* (emphasis added) (quoting *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999)). "Section 1252(g)'s bar on judicial review of claims arising from the government's decision to execute removal orders **does not preclude jurisdiction over the challenges to the legality of the detention at issue here.**" *Kong v. United States*, 62 F.4th 608 (1st Cir. 2023) (emphasis added).

Petitioner's unconstitutional detention is not tied to a decision to "commence" removal proceedings because removal proceedings commenced when the Notice to Appear was served several years before she was detained. *See* 8 U.S.C. § 1229(a)(1). Custody proceedings are independent of "commencing" removal proceedings and fall under 8 U.S.C. § 1226, which has its own jurisdictional provision in 8 U.S.C. § 1226(e) addressing review of **discretionary** custody decisions. The government's own position here—that detention is mandatory for all respondents who enter without inspection ("EWI") eliminates discretion, making § 1226(e) inapplicable and rendering § 1252(g) irrelevant. Congress would not have enacted § 1226(e) if § 1252(g) already barred review of custody determinations; the government's reading collapses this statutory structure and should be rejected. And, as explained in the habeas corpus petition, TRO, and further herein, Petitioner's due process rights are violated by her continued detention, and this Court has jurisdiction to rule on due process violations.

Adjudication of the ongoing violation of Respondent's Fifth Amendment rights are "independent of, and collateral to, the removal process. Her detention does not arise from the government's commence[ment of] proceedings." *Ozturk v. Hyde*, 136 F.4th 382, 397-98 (2d Cir. 2025). Therefore, 8 U.S.C. § 1252(g) does not apply and this Court has jurisdiction over the

instant matter.

In *Günaydın v. Trump*, ---F.Supp.3d---, No. 25-CV-01151 (JMB/DLM), 2025 WL 1459154 (D. Minn. May 21, 2025), this District Court found jurisdiction to rule on a challenge to detention under the automatic stay. *Günaydın* is directly on point and instructive here: an immigration judge ordered DHS to release Mr. Günaydın on bond, and DHS invoked the automatic stay, refusing to release him. *Id.* at *5. *Günaydın* confirms that a challenge to detention under the automatic stay regulation targets an unlawful *process*, not the merits of removal, and is therefore justiciable. *Id.* at *9. The ongoing nature of removal proceedings in this case does not shield an otherwise unconstitutional detention practice from review by this Court. In *Günaydın*, as here, the claim is collateral to removal and falls outside the jurisdictional bars of 8 U.S.C. §§ 1252(g) and (b)(9).

Respondents urge that the Board of Immigration Appeals or federal circuit court through a petition for review should have jurisdiction over Petitioner's claims. ECF No. 11 at pp. 12-13. This ignores the plain fact that the regulations provide no legal mechanism to challenge or appeal the automatic stay before EOIR, the BIA, or the circuit court. There is also no mechanism to challenge or appeal the additional automatic and discretionary stays that follow the initial automatic stay per the regulatory scheme.

Respondents offer no alternative court or tribunal for Petitioner to challenge the fact that DHS is keeping her detained in spite of an immigration judge's order to the contrary.

2. 8 U.S.C. § 1252(b)(9) is not applicable here.

Respondents' argument concerning the 8 U.S.C. § 1252(b)(9) jurisdictional bar muddies the distinction between challenges to removal and constitutional challenges. This case does not challenge any removal order, and section 1252(b)(9) cannot be used to shield unconstitutional detention from judicial review.

The distinction between these categories is important because EOIR lacks jurisdiction to consider constitutional challenges. *Ozturk v. Hyde*, 136 F.4th 382, 400 (2025); *see also Matter of C-*, 20 I&N Dec. 529, 532 (BIA 1992) ("Moreover, it is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations."). The Second Circuit noted,

> [W]hile the court of appeals considering the petition for review may consider constitutional claims, that court is obliged to decide the petition ***only*** on the administrative record on which the order of removal is based. 8 U.S.C. § 1252(b)(4)(A). However, **we are not persuaded that an IJ or the BIA would have developed a sufficient factual record, or any record at all,** with respect to the challenged ***detention***, especially seeing as **bond hearings are decided separately, appealed separately, and contain separate records than the removal proceedings.**

Ozturk, 136 F.4th at 400 (emphasis added) (internal quotation marks omitted).

The First Circuit noted that the legislative history of section 1259(b)(9) indicates that federal courts retain jurisdiction of habeas petitions:

> [T]he legislative history indicates that Congress intended to create an exception for claims "independent" of removal. H.R.Rep. No. 109–72, at 175, *as reprinted in* 2005 U.S.C.C.A.N. at 300. **Thus, when it passed the REAL ID Act, Congress stated unequivocally that the channeling provisions of section 1252(b)(9) should not be read to preclude "habeas review over challenges to detention."** ***Id.*** (indicating that **detention claims are "independent of challenges to removal orders").** In line with this prescription, **we have held that district courts retain jurisdiction over challenges to the legality of detention in the immigration context.** *See Hernández v. Gonzales*, 424 F.3d 42, 42 (1st Cir.2005) (**holding that detention claims are independent of removal proceedings and, thus, not barred by section 1252(b)(9)).**

Aguilar v. ICE, 510 F.3d 1, 11 (1st Cir. 2007) (emphases added). The Ninth Circuit concurs that 1259(b)(9)'s jurisdictional limitations only apply with respect to final orders of removal, and that Article III courts maintain jurisdiction over constitutional challenges to detention. *Nadarajah v. Gonzales*, 443 F.3d 1069, 1075-76 (9th Cir. 2006). Therefore, section 1259(b)(9) does not prevent this Court from exercising jurisdiction.

Additionally, Respondents' reliance on *Jennings v. Rodriguez* is misplaced. The Supreme Court rejected an "expansive interpretation of § 1252(b)(9)[.]" *Jennings v. Rodriguez*, 583 U.S. 281, 293 (2018). The excerpt from a concurrence that Respondents cited was already rejected in the same case: "The question is not whether ***detention*** is an action taken to remove an

alien but whether the legal questions in this case arise from such an action" and "those legal questions are too remote from the actions taken to fall within the scope of § 1252(b)(9)." *Id.* at 295 n.3 (emphasis in original). Thus, section 1252(b)(9) does not preclude review of Petitioner's case.

Therefore, this Court has jurisdiction to rule on the instant TRO and Petitioner's underlying habeas corpus petition.

B. Petitioner is likely to succeed on the merits of her habeas corpus petition.

1. Ms. Aguilar Maldonado's due process rights have been violated, and the *Mathews* factors all weigh in her favor.

Respondents misplace Ms. Aguilar Maldonado's detention challenge. IJ Ivany already determined that Petitioner is neither a flight risk nor a danger to the community and ordered DHS to release her on bond. However, she remains detained. Petitioner is thus challenging the automatic stay provision that DHS is relying on to keep her detained as unconstitutional. 8 C.F.R. § 1003.19(i)(2). This Court is likely to find that Ms. Aguilar Maldonado is detained in violation of due process.

Under *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), courts weigh three factors in determining whether due process requires additional procedural protections: (1) the private interest affected by the government's action; (2) the risk of erroneous deprivation under the procedures used, and the probable value of additional safeguards; and (3) the government's interest and any

burdens additional safeguards would impose.

a. *Private Interest*

Here, the first *Mathews* factor, private interest, weighs in Ms. Aguilar Maldonado's favor. She has a fundamental liberty interest in remaining free from physical restraint and in the care, companionship, and custody of her two children—interests long recognized as deserving the highest constitutional protection. *Pierce v. Soc'y of the Sisters*, 268 U.S. 510, 534-35 (1925); *Santosky v. Kramer*, 455 U.S. 745, 758-59 (1982); *see also Günaydın*, 2025 WL at *9 ("being free from physical detention is 'the most elemental of liberty interests'" (citation omitted)). Additionally, "[w]hen assessing this factor, courts consider the conditions under which detainees are currently held, including whether a detainee is held in conditions indistinguishable from criminal incarceration." *Günaydın*, 2025 WL at *9 (citing *Hernandez-Lara v. Lyons*, 10 F.4th 19, 28 (1st Cir. 2021) and *Velasco Lopez v. Decker*, 978 F.3d 842, 852 (2d Cir. 2020)). Ms. Aguilar Maldonado is detained at Kandiyohi County Jail, a jail that houses pre-trial criminal arrestees and incarcerated prisoners serving sentences in addition to immigration detainees. She is "experiencing all the deprivations of incarceration, including...most fundamentally, the lack of freedom of movement." *Id.*

///

b. *Risk of Erroneous Deprivation*

The second *Mathews* factor, risk of erroneous deprivation, also weighs in Petitioner's favor. The government invoking the automatic stay under 8 C.F.R. § 1003.19(i)(2) rendered the immigration judge's individualized, fact-based custody determination a farce and replaced it with a categorical rule that requires no showing of danger, flight risk, or necessity. "[T]he risk of deprivation is high because the only individuals adversely affected by this regulation are those who have already prevailed in a judicial hearing." *Günaydın*, 2025 WL at *9. Additionally, "the automatic stay regulation includes no requirement that the agency official invoking it consider any individualized or particularized facts, which increases the potential for erroneous deprivation of individuals' private rights." *Id.* at *10. And, "the automatic stay regulation does not include any standards for the agency official to satisfy and operates as an appeal of right. In this way, the regulation runs counter to the more typical process, in which a stay pending appeal is deemed 'an extraordinary remedy,' and 'an intrusion into the ordinary processes of administration and judicial review[.]'" *Id.* (internal citations omitted).

Here, in addition to the procedural concerns increasing the risk of erroneous deprivation, DHS's unsupportable position on Petitioner's custody

is not likely to succeed on appeal at the BIA.[1] Respondents argue that Petitioner is an "applicant for admission" defined as "alien[s] present in the United States who [have] not been admitted" or "who arrive[] in the United States." 8 U.S.C. § 1225(a)(1) and therefore falls under the mandatory detention provisions of 1225(b)(2). ECF No. 11 at 4. Respondents go further and incorrectly refer to Petitioner as an "arriving alien." ECF No. 11 at 15. This mischaracterization is refuted by the government's own charging documents.

The charging document for immigration proceedings, the Notice to Appear ("NTA"), plainly shows DHS charged Petitioner as "an alien present in the United States who has not been admitted or paroled" under 8 U.S.C. § 1182(a)(6)(A)(i)—placing her in standard removal proceedings under INA § 240, not as an arriving alien under § 235. *See* ECF No. 12-1.

This is not a trivial distinction. Congress expressly provided that "arriving aliens" placed in expedited removal under § 1225(b)(1) or certain

[1] Respondents' opposition to Petitioner's TRO devotes significant time to the assertion that Ms. Aguilar Maldonado is subject to mandatory detention under 8 U.S.C. § 1225. IJ Ivany has already ruled to the contrary and Petitioner's challenge before this Court is not to DHS's position that Petitioner is subject to detention under 8 U.S.C. § 1225. Petitioner is challenging her detention pursuant to the automatic stay regulation that DHS is using to keep her detained in spite of IJ Ivany's order to the contrary. In any case, DHS is also not likely to succeed on the merits of its appeal, as explained herein, thus increasing the risk of erroneous deprivation of her rights.

other § 1225(b)(2) contexts are ineligible for bond. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). By contrast, individuals in § 240 proceedings under § 1226(a) are eligible for individualized bond determinations before an immigration judge. Moreover, Petitioner entered the U.S. as a UAC in 2016, was transferred to the custody of the Department of Health and Human Services, Office of Refugee Resettlement and later released to a sponsor. Contreras Edin Decl. ¶ 7, Ex. K.

Under 8 U.S.C. § 1232(a)(5)(D), any UAC "**shall** be placed in removal proceedings under section 1229a of this title." (emphasis added.) That statutory mandate applies regardless of whether the child later turns 18; Congress did not create a sunset provision stripping § 240 status upon reaching majority age.[2] Once placed in § 1229a proceedings as a UAC, the detention authority is governed by § 1226(a)—the general provision for custody of respondents in standard removal proceedings—not the mandatory detention provisions of § 1225(b)(2). This framework is distinct from *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019), and *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), which involved noncitizens **initially** held under § 1225(b) and lacking the

[2] Once DHS or CBP identifies a child as a UAC, § 1232(a)(5)(D) requires the government to place them into INA § 240 removal proceedings (not expedited removal under § 235) and, if they apply for asylum, to give USCIS initial jurisdiction over the application. *See JOP v. DHS,* No. 8:19-CV-01944-SAG (D. Md.)

special statutory placement protections afforded to UACs. Petitioner was never in § 1225(b) proceedings; she was placed directly into § 240 proceedings at the outset pursuant to § 1232(a)(5)(D).

The government's suggestion that Petitioner's age at the time of the July 17, 2025 arrest nullifies these protections is incorrect. ECF No. 11 at 17, n.6. The statutory classification as a UAC is determined at the time of initial DHS encounter and controls the initiation of removal proceedings. *See* 8 U.S.C. § 1232(a). Once placed into § 240 proceedings under that mandate, § 1226(a) governs custody determinations and permits Immigration Judges bond authority. Accordingly, Respondents' claim that Petitioner is subject to mandatory no-bond detention under § 1225(b)(2) is without merit, and DHS is not likely to succeed on its appeal, thus increasing the risk of erroneous deprivation.

c. *Respondents' Interest and Burden of Safeguards*

The third *Mathews* factor offers no counterweight to these private interests. The government identifies no specific, legitimate interest justifying Ms. Aguilar Maldonado's continued detention. The government's reliance on the automatic stay to hold Ms. Aguilar Maldonado in jail adds no substantive safeguard and instead operates solely to nullify the immigration judge's decision. "[E]nsuring that persons subject to possible removal do not commit

crimes or evade law enforcement during the pendency of their removal proceedings presents a significant governmental interest." *Günaydın*, 2025 WL at *9; *see also El-Dessouki v. Cangemi*, 2006 WL 2727191, at *3 (D. Minn. Sept. 22, 2006) ("a finite period of detention to allow the BIA an opportunity to review the immigration judge's bond redetermination is a narrowly tailored procedure that serves the government's interest in preventing flight of aliens likely to be ordered removable and in protecting the community") (emphasis added). However, here, **Respondents make no argument that Petitioner is a danger or flight risk**, and IJ Ivany has already ruled that she is neither.

Courts in this District and elsewhere have granted immediate release to similarly situated noncitizens, finding the automatic stay violates due process. *See Günaydın*, 2025 WL at *5-10; *Mohammed H. v. Trump*, No. 25-CV-1576 (JWB/DTS), 2025 WL 1334847, at *6 (D. Minn. May 5, 2025) ("**Invoking the automatic stay without justifying evidence twists the rule into an unfair and improper procedure, which due process does not permit.**") (emphasis added). These courts recognized that the private liberty interests, the absence of individualized findings, and the availability of existing stay mechanisms all compel relief.

Civil immigration detention must remain "nonpunitive in purpose and effect." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Detention divorced from

any individualized necessity instead serves only punitive or deterrent purposes, which the Constitution forbids. Yet Respondents' own filings admit they offer no individualized reason for detaining Ms. Aguilar Maldonado. Respondents state that "Congress broadly crafted 'applicants for admission' to include undocumented aliens present within the United States like Petitioner" and "directed aliens like the Petitioner to be detained during removal proceedings" — without any finding of danger or flight risk. ECF No. 11 at 26.

That blanket approach nullifies the immigration judge's individualized bond determination and keeps Ms. Aguilar Maldonado confined under carceral conditions, in a county jail, for twenty-six days (26) and counting, separated from her nursing son and other small child, solely based on a policy memorandum dictating a novel reading of a well-established statute. Such detention is not regulatory; it is punishment in all but name.

Respondents also claim Ms. Aguilar Maldonado's continued custody is merely "for the purpose of conducting her removal proceedings" under 8 U.S.C. § 1225(b)(2)(A), but their own filings show that the detention is categorical, not individualized. They offer no evidence that she poses a danger or flight risk—only the bare assertion that all "applicants for admission" must be detained until proceedings conclude.

> Congress broadly crafted 'applicants for admission' to include undocumented aliens present within the United States like

> Petitioner. See 8 U.S.C. § 1225(a)(1). And, Congress directed aliens like the Petitioner to be detained during removal proceedings. 8 U.S.C. § 1225(b)(2)(A); *Jennings*, 583 U.S. at 297 ('Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded.'). In so doing, Congress made a legislative judgment to detain undocumented aliens during removal proceedings, as they—by definition—have crossed borders and traveled in violation of United States law.

ECF No. 11 at 26. This rigid, one-size-fits-all approach ignores the fact that immigration judges have statutory authority to issue individualized bond decisions and instead treats detention as an automatic consequence of status, stripping it of any legitimate regulatory tether. *See* Contreras Edin Decl. ¶ 9, Ex. M.

By nullifying the immigration judge's bond order through the automatic stay without any showing of necessity, harm, prejudice, or likelihood of success on the merits, Respondents have converted what should be a narrowly tailored regulatory measure into an instrument of punishment which imposes those in immigration civil proceedings to incarceration in a detention facility under conditions indistinguishable from those of criminally convicted inmates. This is precisely the sort of punitive civil detention the Constitution forbids.

The third *Mathews* factor thus also weighs in Petitioner's favor, demonstrating that she is likely to succeed on the merits of her habeas corpus petition, and a TRO should be granted releasing her during the pendency of

these proceedings.

2. The automatic stay provision keeping Aguilar Maldonado detained is unconstitutional.

In whole, 8 C.F.R. § 1003.19(i) is unconstitutional and as applied to Ms. Aguilar Maldonado, it has functioned to violate her due process rights. The automatic stay permits DHS to unconstitutionally unilaterally undermine an immigration judge's custody determination. The automatic stay renders process of going before the immigration judge to seek bond a charade. It allows for the appearance of due process and the opportunity to be heard before the immigration judge, but in reality, it does not matter what the outcome of any custody hearings may be. DHS can invoke the automatic stay in order to keep a noncitizen detained, despite an order to the contrary, and without any showing of probability of success on the merits of an appeal.

Respondents state the automatic stay lapses 90 days after filing the notice of appeal, and thus is not indefinite or in violation of due process. However, the same regulation provides DHS with the ability to seek a further discretionary stay. *See* 8 C.F.R. §§ 1003.19(i)(1); 1003.6(c)(5). This regulation allows for DHS to file a motion for discretionary stay, provides the Board of Immigration Appeals ("BIA") with 30 more days to decide on the motion for discretionary stay, and does not proscribe a time limit for the length of the discretionary stay, should it be granted. 8 C.F.R. § 1003.6(c)(5).

Further, even if the BIA upheld IJ Ivany's order, granting Petitioner a bond, and ordering her released, she would remain in detention while DHS has the opportunity to refer the case to the Attorney General pursuant to 8 C.F.R. § 1003.1(h)(1). 8 C.F.R. § 1003.6(d). The same additional automatic five-day stay applies if the BIA denies DHS's motion for discretionary stay or fails to act on such a motion before the automatic stay period expires. *Id.* If the case is referred to the Attorney General, that second automatic stay expires 15 business days after referral. *Id.* DHS may thereafter file another motion for discretionary stay. *Id.* Importantly, if a case is referred to the Attorney General, "[t]he Attorney General may order a discretionary stay pending the disposition of any custody case by the Attorney General or by the Board." *Id.* There is no proscribed time limit for this stay or these decisions. Nor is there a legal mechanism for a noncitizen to challenge the grant of an automatic or discretionary stay before EOIR or the BIA.

The Court in *Ashley v. Ridge*, 288 F. Supp. 2d 662 (D. N.J. 2003) found a prior version of the automatic stay unconstitutional.[3] The court reasoned, "[i]n effect, **the automatic stay provision renders the Immigration Judge's**

[3] The prior version of the 8 C.F.R. § 1003.19(i) regulation did not proscribe a 90-day limit for the automatic stay. However, the court's reasoning in *Ashley v. Ridge* is still on point and persuasive, as the regulations as written today allow for essentially indefinite detention via DHS' filing motions for discretionary stays and/or referrals to the Attorney General.

bail determination an empty gesture." *Id.* at 668 (emphasis added). The court elaborated that the purpose of the automatic stay is to mitigate flight risk and danger to the community, and where an immigration judge had already addressed those concerns and the government offered no further reason to believe the petitioner would be a flight risk or danger to the community, the detention was unconstitutional. *Id.* at 669. Particularly instructive, the court explained,

> the risk of the erroneous deprivation of liberty is substantial as the application of the automatic stay provision here was the result of a unilateral determination made by a [DHS official] which overruled the bail decision made by an Immigration Judge. Unlike the typical requests for a stay which require a demonstration of the "likelihood of success on the merits," the automatic stay provision demands no such showing; in fact, as previously discussed, it was enacted precisely to avoid the need for such an individualized determination. Aliens like Petitioner can consequently remain in detention no matter how frivolous the appeal by the Government. Moreover, the procedural safeguards that exist within the Immigration Judge's hearing reduce the risk of that erroneous liberty deprivation.

Id. at 671-72. Here, as in *Ashley*, a DHS official has made the unilateral decision to overrule the Immigration Judge and keep Ms. Aguilar Maldonado detained, despite being ordered released on bond.

Considering the manner in which DHS has acted thus far in keeping Ms. Aguilar Maldonado Aguilar (arresting her without cause, changing the charges on the NTA, and invoking the automatic stay after receiving IJ Ivany's order granting bond) Ms. Aguilar Maldonado has every reason to expect that DHS

will continue to act in this manner and seek further discretionary stays. Indeed, all DHS has to do is **request** a discretionary stay for Ms. Aguilar Maldonado to continue to be detained. 8 C.F.R. § 1003.6(d). Even if the BIA denies such a motion, a separate automatic stay will be invoked, and DHS is given more time to present the case to the AG and file yet another discretionary stay request. *Id.* Ms. Aguilar Maldonado is therefore likely to show that she is unconstitutionally detained pursuant to the automatic stay and will succeed on the merits of her habeas petition.

3. Respondents' reliance on *Barajas Farias* is misplaced.

Respondents' reliance on *Barajas Farias v. Garland*, No. 24-cv-04366-MJD-LIB (D. Minn. Dec. 6, 2024) (ECF No. 18) (hereinafter, "*Barajas Farias*"), is misplaced. That case involved materially different facts and procedural history. Unlike the Petitioner here, Mr. Barajas Farias was detained for a conviction of a security related offense and subject to mandatory detention under 8 C.F.R. § 1003.19(h)(2). *Barajas Farias* at 8. This unpublished order is of no significant relevance to the proceedings before this Court because that case did not involve or address the automatic stay regulation. This unpublished opinion is inapposite to the instant case.

Additionally, unlike Mr. Barajas Farias, Petitioner here has not been convicted of crimes that would make her a security risk or subject to mandatory

detention; she has not been convicted of any crimes whatsoever. Notably, DHS made no argument that Petitioner is a security risk when it appealed the bond decision to the BIA. *See* ECF No. 12-4. Thus, *Barajas Farias* is not relevant to Petitioner's case because—unlike *Barajas Farias*—she has not been shown to be a risk to public safety or national security and was granted bond.

Considering all the above, Petitioner is likely to succeed on the merits of her habeas corpus petition, warranting the issuance of a TRO and her release during the pendency of these proceedings.

C. Petitioner has been and continues to be prejudiced and irreparably harmed by the government's violating her due process rights.

Because the government's actions have already deprived Ms. Aguilar Maldonado of her liberty, her ability to care for her children, and the benefit of an individualized bond determination, and because these violations continue each day she remains in custody, she has suffered and will continue to suffer actual prejudice. *See Puc-Ruiz v. Holder*, 629 F.3d 771, 782 (8th Cir. 2010) (prejudice exists where an alternate result may well have occurred absent the violation). Immediate relief is warranted to halt ongoing harm and restore her rights.

Further, Ms. Aguilar Maldonado is a nursing mother and has been lactating under the severe carceral conditions of detention in Kandiyohi County Jail, over the discouragement of jail personnel. ECF No. 1-1. The

conditions of her continued detention have caused her breastmilk to turn green. *Id.* ¶ 13. Despite IJ Ivany ordering DHS to release her on bond, DHS continues to hold Ms. Aguilar Maldonado, away from her nursing child. *Id.* at ¶ 11. Ms. Aguilar Maldonado has and will continue to suffer significant irreparable harm if she remains detained.

Respondents argue that DHS rescinded its 2021 policy and position that nursing mothers generally should not be detained. This may be true, however, this policy position does not change the actual harm already experienced by Ms. Aguilar Maldonado. Indeed, Respondents offer no explanation for why that considered and detailed policy was rescinded or why DHS *now* believes nursing mothers *should* be detained.

As explained, Ms. Aguilar Maldonado's continued unjustified detention constitutes irreparable and immediate harm and justifies the issuance of a TRO while her habeas proceedings are pending.

D. The issuance of a TRO is in public interest.

Respondents argue that the government has a compelling interest in detaining Ms. Aguilar Maldonado and that continued detention is in the public interest. That broad enforcement claim ignores the fact that she has already been found eligible for release on bond by a neutral immigration judge, and DHS can fully enforce the immigration laws while she is out of custody.

The government cites cases recognizing a generalized "compelling

interest" in steady enforcement of immigration laws.

> The government has a compelling interest in the steady enforcement of its immigration laws. *See Miranda v. Garland*, 34 F.4th 338, 365–66 (4th Cir. 2022) (vacating an injunction that required a "broad change" in immigration bond procedure); *Ubiquity Press Inc. v. Baran*, No 8:20-cv-01809-JLS-DFM, 2020 WL 8172983, at *4 (C.D. Cal. Dec. 20, 2020) ("the public interest in the United States' enforcement of its immigration laws is high"); *United States v. Arango*, CV 09-178 TUC DCB, 2015 WL 11120855, at 2 (D. Ariz. Jan. 7, 2015) ("the Government's interest in enforcing immigration laws is enormous.").

ECF No. 11 at 30-31.

Granting Ms. Aguilar Maldonado's TRO is fully consistent with the government's ability to enforce its immigration laws. an immigration judge has already determined that she can be released on bond while her removal case proceeds. If the TRO is granted, DHS retains all tools to continue her removal case, to monitor her compliance with conditions of release, and to seek re-detention if circumstances change.

The public interest is not served by needlessly incarcerating a nursing mother, with no criminal conviction, who has complied with prior proceedings, particularly when that detention is maintained only through an automatic stay provision that bypasses individualized findings and review.

Courts have recognized that the public interest includes upholding constitutional safeguards, ensuring due process, and preventing unnecessary deprivation of liberty. See, e.g., *Mohammed H. v. Trump*, 2025 WL 1692739,

at *6 (D. Minn. June 17, 2025) (rejecting public-interest argument where detention rested solely on automatic stay without evidence); *Günaydın*, 2025 WL at *10 (same). As is here, the government can enforce the law, and the Court can ensure that enforcement proceeds within constitutional bounds by ordering her release on the bond already set.

IV. CONCLUSION

For all of the foregoing reasons, Petitioner asks this Court to grant Temporary Restraining Order and convert the order into a Preliminary Injunction to:

1. Declare that the actions of Respondents as set forth in Ms. Aguilar Maldonado's Petition, Motion, and Memorandum of Law violated the Fifth Amendment of the United States Constitution, 28 U.S.C. § 2241, and the APA.
2. Enjoin Respondents from continuing to detain Petitioner in their custody during the pendency of her petition for writ of habeas corpus before this Court.
3. If Petitioner is not immediately released from Respondents' custody, enjoin Respondents from transferring Petitioner to a detention facility out of this District where she would lose access to his counsel and support network.

4. Grant Petitioner such other relief as the Court deems appropriate and just.

Dated: August 11, 2025

Respectfully submitted,

/s/ Hannah Brown
Hannah Brown (SBN 0400017)
HB Law & Advocacy PLLC
1907 E. Wayzata Blvd., Ste. 300
Wayzata, MN 55391
(612) 439-1882
hannah@hblawadvocacy.com

/s/ Gloria Contreras Edin
Gloria Contreras Edin
MN Attorney ID: 0353255
Contreras Edin Law, P.A.
663 University Avenue W.
STE 200
Saint Paul, MN 55104
P: (651) 771-0019
gloria@contrerasedinlaw.com

Attorneys for Petitioner

CERTIFICATE OF COMPLIANCE

I hereby certify that the above memorandum complies with the limits in Local Rule 7.1(f) and with the type-size limit of Local Rule 7.1(h). This memorandum contains 5,541 words, not including the caption designation required by Local Rule 5.2, the signature-block text, or the certificates of compliance. The total word count between the motion (5,635 words) and this reply is therefore 11,176. This memorandum uses a proportionally spaced font. Microsoft Word for Microsoft 365's word-processing software was used to count words and the function was applied specifically to include all text, including headings footnotes, and quotations. This memorandum, including footnotes, are all set in size 13 double-spaced font.

/s/ Hannah Brown
Hannah Brown